

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BERNARD STEVENS,

Petitioner,

v.

Case No. 10-15105

RAYMOND BOOKER,

Respondent.

**OPINION AND ORDER TRANSFERRING CASE TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner Bernard Sutton Stevens Bey, presently confined at the Mound Correctional Facility in Detroit, Michigan, has filed a petition for writ of habeas corpus. For the reasons set forth below, the court determines that this is a successive habeas corpus petition and, therefore, orders it transferred to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1631¹ and 28 U.S.C. § 2244(b)(3)(A).

In the pending petition, Petitioner challenges his conviction for first-degree criminal sexual conduct entered in Berrien County Circuit Court. On June 8, 1981, Petitioner was sentenced to life imprisonment. On June 19, 2006, Petitioner filed a

¹ 28 U.S.C. § 1631 provides, in relevant part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed

habeas corpus petition in this court challenging the same conviction challenged in the pending petition. The District Court denied the petition on the merits. See *Stevens v. Trombley*, No. 06-12682 (E.D. Mich. June 29, 2006) (Cohn, J.). He filed another habeas corpus petition challenging the same conviction in 2007. That petition was transferred as a successive petition to the Sixth Circuit Court of Appeals. See *Stevens v. Jackson*, No. 07-10579 (E.D. Mich. Feb. 15, 2007) (Steeh, J.). The Court of Appeals denied the motion for an order authorizing the district court to consider the second petition. *In re: Bernard Stevens*, No. 07-1217 (6th Cir. Sept. 20, 2007).

Before a prisoner may file a habeas petition challenging a conviction already challenged in a prior habeas petition, the prisoner must “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained from the Court of Appeals for the Sixth Circuit authorization to file a successive petition in this court. The Sixth Circuit has held that “when a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.” *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly, IT IS ORDERED that the petition for writ of habeas corpus [Dkt. # 1] is TRANSFERRED to the United States Court of Appeals for the Sixth Circuit.

s/Robert H. Cleland
 ROBERT H. CLELAND
 UNITED STATES DISTRICT JUDGE

Dated: January 11, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 11, 2011, by electronic and/or ordinary mail.

s/Lisa G. Wagner

Case Manager and Deputy Clerk
(313) 234-5522